



Senate

General Assembly

File No. 341

February Session, 2010

Substitute Senate Bill No. 241

Senate, April 7, 2010

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND PREQUALIFICATION AND EVALUATION OF CONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (i) of section 4a-100 of the 2010 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2010*):

4 (i) The commissioner may [not issue or renew] deny a
5 prequalification certificate to any contractor or substantial
6 subcontractor (1) who is disqualified pursuant to section 31-57c or 31-
7 57d, [or] (2) who has a principal or key personnel who, within the past
8 five years, has a conviction or has entered a plea of guilty or nolo
9 contendere for or has admitted to commission of an act or omission
10 that reasonably could have resulted in disqualification pursuant to any
11 provision of subdivisions (1) to (3), inclusive, of subsection (d) of
12 section 31-57c or subdivisions (1) to (3), inclusive, of subsection (d) of
13 section 31-57d, as determined by the commissioner, or (3) who, within

14 the past three years, has received three or more unsatisfactory written
 15 evaluations.

16 Sec. 2. Subsection (o) of section 4a-100 of the 2010 supplement to the
 17 general statutes is repealed and the following is substituted in lieu
 18 thereof (*Effective October 1, 2010*):

19 (o) Any contractor or substantial subcontractor aggrieved by the
 20 commissioner's final determination concerning a preliminary
 21 determination, a denial of certification, a reduction in prequalification
 22 classification or aggregate work capacity rating or a revocation [or
 23 nonrenewal] of certification may appeal to the Superior Court in
 24 accordance with section 4-183.

25 Sec. 3. Subsection (e) of section 4a-101 of the 2010 supplement to the
 26 general statutes is repealed and the following is substituted in lieu
 27 thereof (*Effective October 1, 2010*):

28 (e) No person, public agency, employee of a public agency or
 29 certifying official of a public agency shall be held liable to any
 30 contractor, substantial subcontractor or subcontractor for any loss or
 31 injury sustained by such contractor, substantial subcontractor or
 32 subcontractor as the result of the completion of an evaluation form, as
 33 required by this section or by section 4a-100, as amended by this act,
 34 unless such person, agency, employee or official is found by a court of
 35 competent jurisdiction to have acted in a wilful, wanton or reckless
 36 manner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	4a-100(i)
Sec. 2	<i>October 1, 2010</i>	4a-100(o)
Sec. 3	<i>October 1, 2010</i>	4a-101(e)

LAB Joint Favorable Subst. C/R

GAE

GAE Joint Favorable

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill permits the commissioner of the Department of Administrative Services to deny a prequalification certificate to any contractor receiving three or more unsatisfactory evaluations in the past three years and does not result in a fiscal impact to the state.¹

The Out Years

None

¹ Currently, a denial of prequalification or disqualification of a contractor can only occur if the average rating of the contractor's evaluations falls below a minimum performance threshold.

OLR Bill Analysis**sSB 241*****AN ACT CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES AND PREQUALIFICATION AND EVALUATION OF CONTRACTORS.*****SUMMARY:**

This bill permits the administrative services (DAS) commissioner to deny a prequalification certificate to any contractor or substantial subcontractor that has received three or more unsatisfactory written project evaluations in the past three years. It adds this to the existing criteria DAS uses to determine whether a contractor satisfies the prequalification standards. Gaining a DAS prequalification certificate permits a contractor or subcontractor to bid on all or parts of state building construction projects (excluding transportation-related jobs that are handled under Department of Transportation's prequalification process).

The bill also protects anyone who completes a DAS contractor evaluation form from liability for any loss a contractor, substantial subcontractor, or subcontractor incurs as a result. The liability protection exists as long as the person is not found to have acted in a willful, wanton, or reckless manner. It also extends this liability protection to public agencies and their employees or officials as the result of evaluating a substantial subcontractor or subcontractor.

EFFECTIVE DATE: October 1, 2010

BACKGROUND***Prequalification Requirements***

By law the DAS commissioner can refuse to issue or renew a prequalification certificate if a contractor or substantial subcontractor is convicted of, or admits to:

1. a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that affects responsibility as a state contractor;
3. a violation of any state or federal antitrust, collusion, or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract; or
4. a willful violation of a statute regulation, or requirement applicable to a public contract, agreement, or transaction (CGS §§ 31-57c, 31-57d).

The above also applies if the DAS commissioner finds a contractor's or substantial subcontractor's principal or key staff member, within the past five years, has committed one of these violations or offenses.

Also, DAS can deny certification if the contractor or substantial subcontractor has a history of failure to perform or of unsatisfactory performance of one or more public contracts, agreements, or transactions. DAS has interpreted this as more than 50% of performance evaluations are unsatisfactory.

Substantial Subcontractor

By law a "substantial subcontractor" means a person who performs work valued at more than \$500,000 for a contractor under a state or municipal contract estimated to cost more than \$500,000.

Subcontractor

A "subcontractor" means a person who performs work valued at more than \$25,000 for a contractor under a state or municipal contract estimated to cost more than \$500,000.

Related Bill

SB 473 also addresses DAS contractor prequalification. It permits the commissioner to deny a prequalification certificate to any contractor or substantial subcontractor that has received four or more unsatisfactory project evaluations in three years.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference

Yea 11 Nay 0 (03/16/2010)

Government Administration and Elections Committee

Joint Favorable

Yea 14 Nay 0 (03/24/2010)